

EXECUTIVE SUMMARY

Introduction

Title 33.1 (Highways, Bridges and Ferries) contains provisions of the Code of Virginia that address the function of transportation in the Commonwealth. Closely related to these provisions are the laws governing transportation development and local and regional transportation that can be found in certain chapters of Title 15.2 (Transportation District Act of 1964, Northern Virginia Transportation Authority, Charlottesville-Albemarle Regional Transit Authority, and Richmond Metropolitan Authority) and Title 56 (Public-Private Transportation Act of 1995, Washington Metropolitan Area Transit Regulation Compact of 1958, and Washington Metropolitan Area Transit Authority Compact of 1966) and in two funds in Title 58.1 (U.S. Route 58 Corridor Development Fund and Northern Virginia Transportation District Fund).

In August 1969, the Virginia Code Commission submitted its report on the proposed revision of Title 33, which was published as House Document 3 of the 1970 Session. The Code Commission's draft for the new Title 33.1 was enacted as Chapter 322 of the Acts of Assembly of 1970. When Title 33.1 was enacted in 1970, it contained eight chapters. In the ensuing 43 Regular Sessions of the General Assembly, 12 chapters have been added and seven repealed, resulting in the existing title comprising 13 chapters. None of the five chapters, two sections, and two compacts that are relocated from Titles 15.2, 56, and 58.1 to the current revision was in existence when the Code of 1950 was adopted. In the intervening years, sections have been added intermittently or at the end of a chapter and chapters often have been added at the end of Title 33.1, which has compromised any previous organizational scheme. It has become appropriate to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to highways, bridges, ferries, rail and public transportation, transportation funding, and local and regional transportation.

Organization of Title 33.2

The title is renamed from Highways, Bridges and Ferries to Highways and Other Surface Transportation Systems to more accurately describe the title's scope. Proposed Title 33.2 consists of 32 chapters divided into four subtitles: Subtitle I (General Provisions and Transportation Entities); Subtitle II (Modes of Transportation: Highways, Bridges, Ferries, Rail, and Public Transportation); Subtitle III (Transportation Funding and Development); and Subtitle IV (Local and Regional Transportation).

Subtitle I contains proposed Chapter 1 (Definitions and General Provisions), which consists of titlewide definitions and provisions that are broadly applicable to transportation, and proposed Chapter 2 (Transportation Entities), which consists of provisions relating to the powers, duties, and obligations of the Commonwealth Transportation Board, Commissioner of Highways, Department of Transportation, and Department of Rail and Public Transportation.

Subtitle II contains proposed Chapters 3 through 14, which pertain to maintenance, control, operation, regulation, and construction of modes of transportation such as highways, bridges, ferries, toll facilities, and rail and public transportation in the Commonwealth. Proposed Chapter 3 (Highway Systems) includes provisions from existing Chapter 1 that govern the Interstate System, primary state highway system, secondary state highway system, and urban

highway system, as well as allocations of highway funds. Proposed Chapter 4 (Limited Access Highways, Scenic Highways and Virginia Byways, and Highways over Dams) brings together a few existing articles relating to specially designated highways. Proposed Chapter 5 (HOV Lanes and HOT Lanes) brings together provisions from existing Chapter 1 relating to high-occupancy vehicle lanes and high-occupancy traffic lanes. Proposed Chapter 6 (Ferries and Toll Facilities) brings together sections from existing Chapter 1 that directly relate to toll facilities and ferries. Proposed Chapter 7 (Local Authority over Highways) has been a chapter since the 1970 title revision and remains a chapter in the proposed revision. Proposed Chapter 8 (Offenses Concerning Highways) brings together sections related to littering and other offenses committed on highways. Proposed Chapter 9 (Abandonment and Discontinuance of Highways and Roads) brings together and clarifies previously convoluted sections in Articles 10 through 13 in existing Chapter 1 relating to the abandonment and discontinuance of highways and roads. Proposed Chapter 10 (Eminent Domain) retains Article 7 of existing Chapter 1 relating to eminent domain, damages, and acquisition of land. Proposed Chapter 11 (Highway Construction Contracts and Suits; Highway Contractors' Association) includes two articles that bring together sections throughout existing Title 33.1. Proposed Chapter 12 (Outdoor Advertising in Sight of Public Highways) retains the provisions of existing Chapter 7. Proposed Chapters 13 and 14 (Woodrow Wilson Bridge and Tunnel Compact; Virginia-North Carolina Interstate High-Speed Rail Compact) assign a chapter designation to these two compacts, both of which will be set out in the Compacts volume.

Subtitle III contains proposed Chapters 15 through 18 and collects various sections relating to transportation funding and development in the Commonwealth. Proposed Chapter 15 (Transportation Funding) brings together various funds and general sections relating to transportation funding, such as the Virginia Transportation Infrastructure Bank, the Transportation Partnership Opportunity Fund, Funds for Access Roads, the Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011, and the Transportation Trust Fund, and establishes the Highway Maintenance and Operating Fund that, although referenced, is not currently in the Code of Virginia. Proposed Chapter 16 (Rail Funds) includes provisions relating to funding for the construction of industrial access railroad tracks, the Rail Enhancement Fund, the Shortline Railway Preservation and Development Fund, and the Intercity Passenger Rail Operating and Capital Fund. Proposed Chapter 17 (Transportation Development and Revenue Bond Act) retains existing Article 5 (§ 33.1-267 et seq.) of Chapter 3, the State Revenue Bond Act, with a more accurate name. Proposed Chapter 19 (Public-Private Transportation Act of 1995) retains and relocates Chapter 22 (§ 56-556 et seq.) of Title 56 (Public Service Companies) to this more appropriate subtitle on transportation funding in proposed Title 33.2.

Subtitle IV contains proposed Chapters 19 through 32 all of which relate to local and regional transportation. Proposed Chapter 19 (Transportation District Act of 1964) retains and relocates Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2 to this more appropriate subtitle on local and regional transportation in proposed Title 33.2. Proposed Chapter 20 (Local Transportation Districts) retains existing Chapter 13. Proposed Chapter 21 (Transportation Districts within Certain Counties) retains existing Chapter 15. Proposed Chapter 22 (Chesapeake Bay Bridge and Tunnel District and Commission) is a new chapter that includes provisions from separate acts of assembly that are currently incorporated by reference in § 33.1-253. Proposed Chapter 23 (U.S. Route 58 Corridor Development Fund and Program) brings together two sections, one in existing Title 33.1 that delineates the Program and another from Title 58.1 that provides for the Fund.

Proposed Chapter 24 (Northern Virginia Transportation District Fund and Program) brings together two sections, one in existing Title 33.1 that delineates the Program and another from Title 58.1 that provides for the Fund. Proposed Chapter 25 (Northern Virginia Transportation Authority) relocates Chapter 48.2 (§ 15.2-4829 et seq.) of Title 15.2. Proposed Chapter 26 (Hampton Roads Transportation Fund) creates a new chapter for a regional fund. Proposed Chapter 27 (Transportation District within the City of Charlottesville and the County of Albemarle) retains existing Chapter 16. Proposed Chapter 28 (Charlottesville-Albemarle Regional Transit Authority) relocates Chapter 71 (§ 15.2-7100 et seq.) of Title 15.2. Proposed Chapter 29 (Richmond Metropolitan Authority) retains existing Chapter 70 (§ 15.2-7000 et seq.) of Title 15.2. Proposed Chapter 30 (Washington Metropolitan Area Transit Regulation Compact of 1958) and Proposed Chapter 31 (Washington Metropolitan Area Transit Authority Compact of 1966) separate two compacts previously combined and designated as Chapter 18 (§ 56-529 et seq.) of Title 56. Proposed Chapter 32 (Metropolitan Planning Organizations) brings together those sections found in Article 15 (Miscellaneous Provisions) of existing Chapter 1 that relate to metropolitan planning organizations.

Repealed Chapters and Articles

During the revision process, the Code Commission became aware of a number of existing articles and an existing chapter that are either unnecessary or obsolete and have been deleted; these are recommended for repeal and thus not included in the proposed title. Chapter drafting notes in the body of this report describe the reasons for the repeal of the following four articles and one chapter:

Chapter 1, Article 9, Highway Right-of-Way Fund; Acquisition of Properties for Future Use (§ 33.1-137 et seq.)

Chapter 1, Article 16, Virginia Alternative Fuels Revolving Fund (§ 33.1-223.3 et seq.)

Chapter 4, Article 2, Assumption by County with Executive Form of Government (§ 33.1-326 et seq.)

Chapter 4, Article 3, Redemption of District Road Bonds (§ 33.1-332 et seq.)

Chapter 14, Virginia Coalfield Coalition Authority (§ 33.1-426 et seq.)

Other Affected Titles

As noted previously, several chapters are relocated to proposed Title 33.2: Transportation District Act of 1964 (§ 15.2-4500 et seq.), Richmond Metropolitan Authority (§ 15.2-7000 et seq.), Charlottesville-Albemarle Regional Transit Authority (§ 15.2-7022 et seq.), Northern Virginia Transportation Authority (§ 15.2-4829 et seq.), and Public-Private Transportation Act of 1995 (§ 56-556 et seq.). In addition, two funding sections, § 58.1-815 (U.S. Route 58 Corridor Development Fund) and § 58.1-815.1 (Northern Virginia Transportation District Fund), are relocated from Title 58.1 so that they are found with their corresponding programs. Finally, two compacts are relocated from Title 56: Washington Metropolitan Area Transit Regulation Compact of 1958 and Washington Metropolitan Area Transit Authority Compact of 1966, both in Chapter 18 (§ 56-529 et seq.) of Title 56.

The relocation of sections, articles, and chapters from other titles of the Code of Virginia to proposed Title 33.2 is not intended to have any substantive effect on their interpretation.

An outline of the organization of proposed Title 33.2 is included as Appendix A.

Changes Made Throughout Title 33.2

An explanation of the significant changes made in each chapter is provided in a drafting note that precedes each chapter. Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering the section and any cross-references contained in the section. If a section drafting note states "technical changes," the section contains nonsubstantive changes to the text. These technical changes may range from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When a section contains structural or substantive changes, such as the deletion or addition of language, the section drafting note describes the reason for the proposed change.

Many of the technical changes arose from the Code Commission's determination that terminology should be clear, consistent, and modern. The following lists provide a representative sample of the most significant and most widely implemented technical changes made in the proposed title.

The following changes are made in order to maintain consistency with changes made in previous title revisions, to update antiquated language, to provide clarity, and to bring Title 33.2 into accordance with Title 1:

- § 1-218. Includes. "Includes" means includes, but not limited to.
- § 1-221. Locality. "Locality" means a county, city, or town as the context may require.
- § 1-224. Municipality; incorporated communities; municipal corporation. "Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import mean cities and towns.
- § 1-225. Nonlegislative citizen member. "Nonlegislative citizen member" means any natural person who is not a member of the General Assembly of Virginia.

Any reference to a "citizen member" or "nonlegislative member" is changed to this full name.

- § 1-227. Number. A word used in the singular includes the plural and a word used in the plural includes the singular.
- § 1-230. Person. "Person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.
- § 1-244. Short title citations. Whenever a subtitle, chapter, or article does not have a section or provision establishing or authorizing a short title citation for such subtitle, chapter or article, such subtitle, chapter or article may be cited by its caption. The caption is that word or group of words appearing directly below the numerical designation given the subtitle, chapter or article. Captions are intended as mere catchwords to indicate the contents of the subtitles, chapters, and articles and do not constitute part of the act of the General Assembly.

- § 1-254. Town. "Town" means any existing town or an incorporated community within one or more counties which became a town before noon, July 1, 1971, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

The following changes are made to remove and update antiquated terminology or clarify terms with general application, in accordance with Code Commission policies:

- "From time to time": This usually unnecessary reference is removed unless removal would mean the action could only be taken once.
- "As the case may be": This reference is removed when used with an option of two or more entities if it is clear when each option should be taken.
- Unclear references to "herein" are replaced with appropriate references to a section, article, chapter, or title.
- Phrases such as "heretofore or hereafter" are removed because they mean "before now or after now."
- "Percentum" and "per annum" are replaced with "percent" and "per year," respectively.
- When grammatically feasible, "will" or "must" is changed to "shall."
- The outdated reference found in conjunction with a court to a "judge thereof in vacation" is deleted.
- When grammatically feasible, "shall be guilty" is changed to "is guilty."
- "This Commonwealth" is replaced with "the Commonwealth."
- "Virginia" is replaced with "Commonwealth."
- "Adopt regulations" is used rather than "promulgate regulations." The term "adopt regulations" means the process by which regulations are put into effect and includes the promulgation, revision or amendment, and formal acceptance of a regulation by an agency that has exercised its regulation-making authority in accordance with law. In its revision of Titles 2.1, 9, 63.1, 37.1, 3.1, 6.1, etc., the Code Commission approved the use of the more widely used "adopt" instead of "promulgate."
- The term "rule" is deleted when used in conjunction with "regulation" because it has the same meaning.
- Definitions are moved to the beginning of the section, article, chapter, etc., to provide the reader better clarity and context.
- "And/or": This grammatical shortcut, which often leads to confusion or ambiguity, is amended throughout to reflect the appropriate meaning: "and" in the sense of all, inclusive; "or" in the sense of "either/any or both/all." In certain contractual situations, specifically regarding the PPTA, lists are amended to include "or both" or "or any combination thereof" so as not to interfere with existing agreements.
- "Federal, state, or local" and similar series list entities in order from largest to smallest.

The following changes are made throughout proposed Title 33.2 and apply more specifically to the subject matter found in this title:

Unless used in a catchline or in a specific section containing references to more than one board, department, etc.:

- "Board" means the Commonwealth Transportation Board.
- "Commissioner of Highways" is the proper term.
- "Department" means the Department of Transportation.
- "Secretary" means the Secretary of Transportation.

Conventions used throughout proposed Title 33.2:

- "Governing body of a locality" or "local governing body" is preferred over redundant "local governing body of a locality" or "local governing body of a county."
- If a "road" is in the primary or secondary state highway system, it is called a "highway." If "road" refers to a private road, the term "private road" is used.
- The full name of "highway construction district" is used in all references.
- "Jurisdiction" means authority over something and is not used to mean a locality.
- Federal-aid systems comprise the Interstate System and the National Highway System. (See 23 U.S.C. § 103)
- "Interstate System" is capitalized and is the Dwight D. Eisenhower National System of Interstate and Defense Highways. It is also those roads declared part of the Interstate System by the Commonwealth Transportation Board and is as defined in 23 U.S.C. § 103(c).
- References to specific interstate highways do not include the word "route." For example, "Interstate 66" is preferred over "Interstate Route 66."
- "Primary state highway system" is the preferred name for what has previously been referred to as the State Highway System, the primary system of state highways, and the state highway system of primary highways. Singular highways in this system may be referred to as a "primary highway."
- "Secondary state highway system" is the preferred name for this highway system. Singular highways in this system may be referred to as a "secondary highway."
- "Systems of state highways" (as defined in § 1-251) means all systems of highways within the Commonwealth over which the Commonwealth Transportation Board exercises jurisdiction and control.
- "Urban highway system" is a defined term and does not include the word "state" because this system of urban streets is maintained by cities and towns with the help of state funds.

Substantive Changes Proposed in Title 33.2

When the Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include:

- Existing § 33.1-3 contains an unclear allowance that the Commissioner of Highways may be a nonresident of Virginia at the time of his appointment. This language is removed because it does not require him to become a resident after his appointment and the Commissioner of Highways would be required to meet any qualifications presented in his job description. Existing § 33.1-3 also states that the Commissioner's compensation is fixed by the Commonwealth Transportation Board and approved by the Governor. The Commissioner's compensation is found in the appropriation act and so this language is changed.
- Existing § 15.2-4502 contains the following definition: "metropolitan area" means a standard metropolitan statistical area as defined in the pamphlet Standard Metropolitan Statistical Areas, issued by Executive Office of the President, Bureau of the Budget, 1964, or any contiguous counties or cities within this Commonwealth which together constitute an urban area. Because the term "standard metropolitan statistical area," used in the definition of "metropolitan area," has been discontinued by the Office of Management and Budget and the U.S. Census Bureau it is replaced with "metropolitan statistical area" per current usage by the U.S. Census Bureau and the Office of Management and Budget.